

## 15 Regulations of Utility

### 15.1 Purpose

- 15.1.1 The purpose of this section is to provide minimal reasonable regulations as to the location and construction of public utilities facilities within any public easement, road easement or right-of-way within the town of West Lakeland.
- 15.1.2 **All Utilities Subject to This Section.** All utilities operating or maintaining lines, facilities or equipment within a town road right-of-way or upon public land are subject to the regulations of this article.

### 15.2 Utility Construction in Road Cross-Section

All utilities shall construct their lines in accordance with the cross-section detailed drawing for utility installation as approved by the West Lakeland Town Board available upon request from the town clerk.

### 15.3 Construction Permits

- 15.3.1 No utility company shall open, excavate, or disturb the surface of any public ground or right-of-way for any purpose without first having obtained a construction permit from the town clerk. The town clerk shall require proof of workers' compensation insurance coverage from either the utility or its subcontractor prior to issuance of any construction permit.
- 15.3.2 The Utility shall indemnify and hold harmless the Town against liability, claims and lawsuits of any kind, arising directly or indirectly from any act of the contractor, its agents, suppliers, employees or subcontractors in the course of the work.
- 15.3.3 **Distribution System Permits.** Prior to construction of any lines, equipment, facilities, or other parts of a Distribution System, a Utility shall first obtain a construction permit from the Town. The application for a permit shall be submitted in duplicate to the Town. The application shall include: a scale area map showing the proposed location of the lines or equipment to be constructed; depictions and specifications for lines, cables, equipment or facilities to be installed; and a road cross-sectional schematic showing the proposed location of any buried lines or cables. The application shall be accompanied by a fee in an amount determined from time to time by the Town Board to cover the cost to the Town for expenses including but not limited to engineering and legal review.
- 15.3.4 The complete application shall be forwarded to the Town Engineer for review. The Town Clerk shall not issue the permit until the Town Engineer has approved the application in writing and until the Town has been reimbursed by the applicant for its actual expenses incurred in reviewing the application, including all professional consulting fees and engineering fees, by the utility or they will be deducted from the escrow amount prior to the return of the escrow deposit.
- 15.3.5 Construction shall not commence until the Utility has deposited a letter of Credit or cash escrow with the Town, in an amount of 125% of the total cost of

the restoration as estimated by the Town Engineer and held until released by the Town to assure that restoration will be completed equal to or better than the conditions which existed prior to the start of installation. The escrow amount shall be \$3,000.00 unless a different amount is recommended by the town engineer.

**15.3.6 Service Connection Permits.** Prior to any construction or relocation and reconstruction of any Service Connection, a Utility shall first obtain a construction permit from the Town Clerk. The application shall be accompanied by a map showing the address and location of the Service Line to be installed or reconstructed. The Town Clerk may issue the permit upon receipt of the completed application. The purpose of the permit is to provide the Town with information regarding the location, time and extent of the construction or excavation activity.

**15.3.7 Repair or Maintenance Permits.** Prior to any excavation or construction to repair or maintain any portion of a Distribution System, a Utility shall first obtain a construction permit from the Town Clerk. The application shall be accompanied by a map showing the location of the equipment or line to be repaired or excavated. The Town Clerk may issue the permit upon receipt of the completed application and obtaining approval from the township road supervisor. The purpose of the permit is to provide the Town with information regarding the location, time and extent of the construction or excavation activity.

**15.3.8 Emergencies.** A Utility may excavate or perform other work without a permit where an emergency exists requiring the immediate repair of its lines or facilities. Within three (3) working days after effecting emergency repairs, the Utility shall make application for the appropriate permit. For emergency repair to a Distribution System, the permit shall include the Utility's certification that the repaired line has not been relocated or shall include map(s) and schematic(s) to show the relocation of the repaired line or equipment.

#### **15.4 Restoration Work**

After undertaking any work requiring the opening of any public way or public ground the utility shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition. The work shall be completed as promptly as weather permits, and if the utility shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the public way or public ground in the said condition, the town shall have, after demand to the utility to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of the utility. The utility shall pay to the town the cost of such work done for or performed by the town, including its administrative expense and overhead, plus ten percent (10%) additional as liquidated damages. This remedy shall be in addition to any other remedy available to the town.

## **15.5 Relocation of Utilities**

**15.5.1 Relocation of Utilities in Public Ways.** If the Town determines to vacate for a Town improvement project, or to grade, regrade, or change the right-of-way lines of any Public Way, or construct or reconstruct any Utility System in any Public Way, it may order the utility to relocate its Facilities presently therein. The Town shall give the utility reasonable notice of plans to vacate for a Town improvement project, or to grade, regrade, or change the line of any right-of-way or to construct or reconstruct any Town Utility System. If a relocation is ordered within five (5) years of a prior relocation of the same Facilities at Utility expense, the Town shall reimburse for non-betterment expenses on a time and material basis, unless a subsequent relocation is required because of the extension of a Town Utility System to a previously unserved area. Service to previously unserved areas shall be at the Utility's expense. Nothing in this Article requires Utility to relocate, remove, replace or reconnect at its own expense its facilities where such relocation, removal replacement or reconstruction is solely for the convenience of the Town and is not reasonably necessary for the construction or reconstruction of a Public Way or Town Utility System or other Town improvement. In no case shall the Town be liable to the utility for failure to specifically preserve right-of-way under Minn. Stat. 160.29.

**15.5.2 Relocation of Utility in Public Ground.** The Town may require the Utility to relocate or remove its Facilities from Public Ground upon a finding by the Town that the facilities have become or will become substantial impairment of the public use to which the Public Ground is or will be located. The relocation or removal shall be at the Utility's expense. The provisions of this section apply only to facilities constructed upon Public Ground in reliance on a Service Areas license and Utility does not, by this provision, waive its rights under a recorded easement document or prescriptive right in favor of the utility.

**15.5.3 Relocation when public ground vacated.** The vacation of any public ground shall not deprive the utility of the right to operate and maintain its facilities therein. Unless ordered under the provisions of this section, the utility need not relocate until the reasonable cost of relocating and the loss and expense resulting from such relocation is first paid to the utility. When the vacation is for the benefit of the town in the furtherance of a public purpose, the utility shall relocate at its own expense.

## **15.6 Street Improvements, Paving or Resurfacing**

**15.6.1** The Town shall give the Utility reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the Town will start the work, and, if more than one street is involved, the order in which this work is to proceed. The notice shall give to the utility a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the

work to allow the Utility to make any additions, alternations or repairs to its facilities the Utility deems necessary.

- 15.6.2** In cases where streets are at final width and grade and the Town has installed underground sewer mains and Service Connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, and the Utility's main is located under such street, the Utility may be required to install Service Connections prior to such paving or resurfacing, whenever it is apparent that service will be required during the five (5) years following the paving or resurfacing.

## **15.7 Location of Facilities**

- 15.7.1 Location of Above-Ground Facilities.** Above ground Utilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways. A permit to construct facilities on Public Grounds or Public Ways may be disallowed by the Town Board of supervisors upon finding that the proposed facility constitutes a hazard in the right-of-way. A "hazard in the right-of-way" is any construction, at any location within the full width of the right-of-way, which because of position, siting and proximity to the traveled portion of the right-of-way and because of strength, density and mass of construction would be the kind of impediment to a motor vehicle traveling at the posted speed limit sufficient to cause bodily harm to a vehicle's passengers when impacted by said vehicle after it has left the traveled portion of the right-of-way. Upon such a finding, the Utility shall be required to construct its facility outside of the right-of-way. The Utility's construction, reconstruction, operation, repair, maintenance and location of aboveground facilities shall be subject to other reasonable regulations of the Town.

- 15.7.2 Field Location.** The Company shall provide field locations for any of its underground facilities within a reasonable period of time on request by the Town. The period of time will be considered reasonable if it compares favorably with the average time required by the municipalities in the same county to locate municipal underground facilities for the utility.

## **15.8 Licensee's Annual Report**

The Utility Company shall provide an annual revised Town map showing location of its Distribution System in the Town.

## **15.9 General Conditions Applicable to Service Area Licenses for Natural Gas Utilities**

### **15.9.1 Indemnification**

- 15.9.1.1** The Service Area license shall indemnify, keep and hold the Town free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits or license, or the operation of the Utility's facilities located in the Town. The Town shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the Town's

negligence as to the issuance of licenses or permits for, or inspection of, the Utility's plans or work. The Town shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by the Utility, and such performance is nevertheless ordered or directed by the Town after notice of Utility's determination.

**15.9.1.2** In the event a suit is brought against the Town under circumstances where this license condition applies, the utility at its sole cost and expenses shall defend the Town in such suit if written notice thereof is promptly given to the Utility within a period wherein the utility is not prejudiced by lack of such notice. If the Utility is required to indemnify and defend, it will thereafter have control of such litigation, but the Utility may not settle such litigation without the consent of the Town, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense immunity otherwise available to the Town and the utility, in defending any action on behalf of the Town. The Town shall be entitled to assert in any action every defense or immunity that the Town could assert in its own behalf.

**15.9.2 Adequate Supply.** The Service Area licensee shall furnish and supply to the Service Area inhabitants an adequate supply of gas, as long as available, under such pressure and conditions as may be reasonably required under such rules and regulations as may be established by this Article, and the Minnesota Public Utilities Commission, or other such regulatory body as may hereinafter be established under the laws of the State of Minnesota and given jurisdiction thereof.

**15.9.3 Public Safety.** By acceptance of its Service Area license, the licensee acknowledges that the Town may enact ordinances which affect the licensee's right and duties with respect to Pipeline safety and construction, and acknowledges that where such public safety is a bona fide municipal concern, such ordinances shall effectively serve to amend this Article and the rights and duties contained herein. The licensee specifically consents to such amendments, even though they may be unilateral in nature.

**15.9.4 Assignment of Service Area Licenses**

**15.9.4.1** A licensee, upon notice to the Town, shall have the right and authority to assign all rights conferred upon it by this Article to any person. The assignee of such rights, by accepting such assignment, shall become subject to the regulations and conditions of this Article.

**15.9.4.2** The areas of the Town not described in any Service Area license are deemed open areas. Any Utility which is able to provide service to an open area may make application for a Service Area license or for expansion of an existing Service Areas license.

**15.9.5 Review or Revocation of a Service Area License**

**15.9.5.1** The Town Board may review a Service Area license upon the request of any person or upon its own initiative.

**15.9.5.2** A Service Area license may be revoked or reduced in its area upon the Town Board making any one or more of the following findings: The

licensee has failed to meet the general conditions of this Article or the specific conditions of its license; The licensee has failed to operate the utility within the Town in accord with this Article; or Any just cause.

**15.9.5.3** A Violation of any condition set forth in a permit shall be a violation of this Article. Failure to correct said violation within thirty (30) days of written notice from the Town Board shall automatically terminate the permit. All costs incurred by the Town in reviewing the permit shall be the responsibility of the utility.

**15.9.6 Application for Service Area License.** Application for a Service Area license shall be made in writing to the Town Clerk and shall include such maps, schematics, diagrams and narrative descriptions as are necessary to describe or depict: the existing distribution system, the existing service connections, the proposal for extension of the distribution system and a well-defined schedule and calendar for construction of the extension to the Distribution System. A non-refundable fee to defray a portion of the Town's costs for conducting a public hearing shall accompany the application.

**15.9.7 Expansion of Service Area.** A Service Area licensee may make application to expand its Service Area in the same manner as an initial license application.

#### **15.10 Utility Permit Application**

**15.10.1 Permit Required.** Prior to utility installation, within the town road right-of-ways, a utility company shall first obtain a Utility Permit from the Town.

**15.10.2 Permit Application.** Application for the Utility Permit shall be made by completing a form provided by the Town. The permit shall contain the following information:

**15.10.2.1** The name and address of the utility to be performing the installation.

**15.10.2.2** A general description of the work to be performed and the method used for placement.

**15.10.2.3** The location of the proposed utility installation and shown on a Utilities Placement Map.

**15.10.2.3** The proposed time frame for beginning and completing the work.

**15.10.2.4** Description of restoration work and any trimming.

**15.10.3 Restoration.** Town road right-of-ways shall be restored to the same or better condition as they were immediately prior to the placement of the utility.

#### **15.11 Resident Complaints Against Utilities**

Upon notification from the utility company of completion of the project, the Town Clerk will put a notice of same in the Town legal newspaper. Any resident with a complaint regarding the installation or restoration may notify the Town Clerk who in turn will notify the Utility. The Utility will have thirty (30) days to correct this problem and notify the Town of its actions. If the problem is not resolved, to the Town's satisfaction, the Town shall use the escrow funds to correct the problem. All costs incurred by the Town for this procedure shall be paid by the Utility.

**15.12 Initial Service Area License Fees**

**15.12.1** License fees shall be paid by the licensee to defray the Town's cost in granting a license and in administering the regulations of this Article.

**15.12.2** The license fees for licenses awarded are due and payable to the Town of West Lakeland by the licensees on January 1 of each year.

**15.13 Criminal Prosecution.**

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty for a misdemeanor under state law.